



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2011 Biennium

Bill #	HB0401	Title:	Revise methamphetamine clean up laws
Primary Sponsor:	Caferro, Mary	Status:	As Amended

- | | | |
|---|--|---|
| <input type="checkbox"/> Significant Local Gov Impact | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input checked="" type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>
Expenditures:				
General Fund	\$92,521	\$85,665	\$72,803	\$74,998
State Special Revenue	\$10,000	\$15,000	\$15,000	\$15,000
Revenue:				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$10,000	\$15,000	\$15,000	\$15,000
Net Impact-General Fund Balance:	<u>(\$92,521)</u>	<u>(\$85,665)</u>	<u>(\$72,803)</u>	<u>(\$74,998)</u>

Description of fiscal impact:

This bill expands the scope of concern about methamphetamine (meth) exposure beyond processing at drug labs to now include use of meth at inhabitable properties. The bill prohibits habitation of contaminated property reported by law enforcement until the property owner/agent demonstrates the property meets the current Montana clean-up standard. The bill creates administrative and civil enforcement authority for the department; allows for assessment and collection of penalties; and, provides the opportunity for appeal and Board of Environmental Review (BER) hearing of the appeal. The bill creates a methamphetamine contamination clean-up account for the deposit of current contractor certification and training provider fees as well as future penalties collected for violating provisions of the Act.

FISCAL ANALYSIS

Assumptions:

1. Currently the Department of Environmental Quality has authority over inhabitable properties where manufacturing or processing of meth has taken place. Amending 75-10-1305, MCA, to "exposed to the use or processing of methamphetamine" will increase the number of law enforcement referrals by 215 based on FY 2007 data from the Montana Board of Crime Control.

2. New provision (3) under 75-10-1306, MCA, requiring that a listed property may not be inhabited until decontaminated will increase the Meth Cleanup Program's (MCP) work load. Assuming the MCP must perform field inspections to determine if the property is inhabited, at an estimated 30 minutes per 215 inhabitable properties, an additional 108 hours of department staff time is projected. These determinations would be combined with other departmental field activity whenever possible. If the department does not make the determination, local law enforcement or county sanitarians would be contacted to assist in making the determination.
3. It is estimated that five enforcement cases/year would be initiated for violations of New Section 4. New Section 4 would increase the work load for Enforcement Division staff by 30 hours/case. This is not anticipated to have significant impact on staff resources. The workload increase of 20 hours/case for the department legal staff would also be addressed by existing staff.
4. Currently the program expends approximately 10 hours of technical staff time and 3 hours of administrative support time on each contaminated property reported. Proposed revisions would increase the staff time to 13 hours for 215 additional properties, equating to 2,795 hours. In addition, to support specific enforcement provisions it is estimated that 30 hours/case of program staff time would be required. Increasing the number of meth contamination referrals which result in 5 enforcement cases per year would increase the projected staff time another 150 hours. The total is 2,945 hours.
5. It is anticipated that an additional 1.00 FTE environmental science specialist and related costs would be needed to implement the provisions of this bill. Personal services would be \$61,029 in FY 2010 and FY 2011 and increases at 2.5% thereafter.
6. Contracted information technology services would be necessary for database and web modifications in the amount of \$15,000 per year for the 2011 biennium only. Department computer systems analyst time to revise the CEDARS database and live website listings would be absorbed within the Waste & Underground Tank Management Bureau (WUTMB).
7. In addition to contracted services, other operating expenses include office set up of \$2,600 in FY 2010 and communication, supplies, and travel totaling approximately \$24,000 in FY 2010 and increasing at 2.5% per year.
8. Training course provider fees and contractor certification fees provide annual revenue of \$10,000.
9. The anticipated five cases/year that would be in violation for two days would generate \$5,000 (5 cases x \$500/day x 2 days) starting in FY 2011 and would be deposited in a new state special revenue fund. Since the revenues do not cover the estimated expenditures, it is assumed the difference in funding would come from the general fund.
10. Ambiguities described in the technical notes below could result in lawsuits that would require expenditures for defense costs and potential judgments, but those costs cannot be quantified.

	<u>FY 2010</u> <u>Difference</u>	<u>FY 2011</u> <u>Difference</u>	<u>FY 2012</u> <u>Difference</u>	<u>FY 2013</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
FTE	1.00	1.00	1.00	1.00
<u>Expenditures:</u>				
Personal Services	\$61,029	\$61,029	\$62,554	\$64,118
Operating Expenses	\$41,492	\$39,636	\$25,249	\$25,880
TOTAL Expenditures	\$102,521	\$100,665	\$87,803	\$89,998
<u>Funding of Expenditures:</u>				
General Fund (01)	\$92,521	\$85,665	\$72,803	\$74,998
State Special Revenue (02)	\$10,000	\$15,000	\$15,000	\$15,000
TOTAL Funding of Exp.	\$102,521	\$100,665	\$87,803	\$89,998
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$10,000	\$15,000	\$15,000	\$15,000
TOTAL Revenues	\$10,000	\$15,000	\$15,000	\$15,000
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	(\$92,521)	(\$85,665)	(\$72,803)	(\$74,998)
State Special Revenue (02)	\$0	\$0	\$0	\$0

Technical Notes:

1. Section 3(1) contains an ambiguity that could foster lawsuits for damages against law enforcement and the state. Under current law, law enforcement does not report to the Department of Environmental Quality properties that were contaminated by use of meth but were not meth labs. HB 401 would require them to report these properties. It is unclear whether section 3(1) of HB 401 would require law enforcement to now report and DEQ to list those properties that law enforcement had become aware of before HB 401 becomes effective. If HB 401 requires this, then there are approximately 2,150 properties which must be reported and under section 3(3) must be vacated. Failure to clarify this ambiguity exposes law enforcement and the state to potential lawsuits whichever way law enforcement and the department interpret section 3(1). If HB 401 requires the previously-contaminated properties are to be listed and they are not listed, law enforcement and the state could be liable for damages to a person who occupies one of these properties and becomes ill. On the other hand, if law enforcement and the department list those properties and require them to be vacated, and a court later determines that those properties should not have been listed, law enforcement and the department may be sued for economic damages. An applicability section for section 3(1) would eliminate the potential for lawsuits.
2. Section 3(3) contains an ambiguity that could foster lawsuits against the state for damages. Section 3(3), which prohibits habitation of property that is on the contaminated properties list, may or may not apply to a property that was on the list before the effective date of the bill. If it does apply to those properties, there are approximately 200 currently-occupied properties that will need to be vacated until they are cleaned up. Failure to clarify this ambiguity exposes the state to civil damage actions whichever way the department interprets section 3(3). If HB 401 requires the previously-listed properties to be vacated and the department does not require it, the state may be sued for damages by a person who occupies one of these properties and becomes ill. On the other hand, if law enforcement and the department list the properties and require them to

be vacated, and a court later determines that those properties should not have been listed, the state may be sued for economic damages. An applicability section for section 3(3) would eliminate the potential for lawsuits.

Sponsor's Initials

Date

Budget Director's Initials

Date



Dedication of Revenue 2011 Biennium

HB 401

- a) **Are there persons or entities that benefit from this dedicated revenue that do not pay? (please explain)**

This revenue account would be seeded with enforcement action penalties collected from those violating provisions of the revised Methamphetamine Act. Since the emphasis of the program is compliance assistance to help stakeholders avoid enforcement, there will be those who are not penalized but receive compliance assistance paid for, in part, by the few who violate.

- b) **What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?**

Using an established state special revenue account in FYs 2011-2013 to support the needs of the methamphetamine Cleanup Program targets primary users of the program services. Addressing non-compliance is resource intensive and it is advantageous that those requiring resources augment the cost of the program.

- c) **Is the source of revenue relevant to current use of the funds and adequate to fund the program activity that is intended? Yes / No (if no, explain)**

Yes and no. Yes, the source of the new revenue will be relevant to supporting the addition of 1.50 FTE necessary to implement the increased responsibilities required under HB 401.

No, the goal of the program remains compliance assistance over enforcement so the amount of revenue anticipated would not be adequate to fund the increased responsibilities.

- d) **Does the need for this state special revenue provision still exist? ☒ Yes ☐ No (Explain)**

Yes

- e) **Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please Explain)**

No, it does not change the legislature's ability to scrutinize budgets. This state special revenue fund and associated expenditures will be presented in HB 2 in future biennia.

- f) **Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please Explain)**

Yes. This revenue would be used to help make the program effective and timely in meeting its responsibilities associated with the legislative intent of the Methamphetamine Cleanup Act.

- g) **How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please Explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)**

The Department of Environmental Quality and the Permitting and Compliance Division currently maintain a number of fee programs so the addition of this SRA would dovetail with existing efficiencies. The program is currently general funded so increased appropriation would continue to be adequately accounted for.